

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

_____	)	
In re:	)	
	)	
TOP LINE GRANITE DESIGN INC.	)	Chapter 11
	)	Case No. 22-40216-EDK
	)	
Debtor	)	
_____	)	

UNITED STATES TRUSTEE’S MOTION TO CONVERT CASE  
TO CASE UNDER CHAPTER 7, OR, IN THE ALTERNATIVE, TO DISMISS CASE

Pursuant to 28 U.S.C. §§ 586(a)(3)(G), (a)(8) and 11 U.S.C. § 1112(b)(2) & (4), the United States Trustee hereby requests that this Court enter an order dismissing this case or, in the alternative, converting this case to a case under Chapter 7, because there is: (1) a substantial or continuing loss to or diminution of the estate and an absence of a reasonable likelihood of rehabilitation, and (2) gross mismanagement of the estate. In further support of this motion, the United States Trustee states as follows:

1. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 25, 2022 (the “Petition Date”). Since the Petition Date, the Debtor has been operating its business as a debtor-in-possession.

2. On its petition, the Debtor identifies itself as a small business debtor as defined by section 1182(1) of the Bankruptcy Code. The Debtor has elected to proceed under subchapter V of chapter 11 of the Bankruptcy Code.

3. On March 28, 2022, pursuant to section 1183(a) of the Bankruptcy Code, the United States Trustee appointed the Subchapter V Trustee.

4. The Debtor filed Chapter 11 Plan of Reorganization for Small Business under Subchapter V on June 24, 2022. [Doc. # 106], and First Amended Chapter 11 Plan of Reorganization for Small Business Debtor under Subchapter V (the “Plan”) on July 1, 2022 [Doc. # 113]. The Debtor’s Plan is to be funded with, in part, “proceeds from Potential Litigation and Avoidance Actions, if any.” See Plan at ¶ 1.8. Indeed, proceeds from avoidance actions would most likely be the only source for distributions to the unsecured creditors under the Debtor’s Plan.

5. The Court scheduled a hearing on confirmation of the Plan for September 1, 2022 at 12:30 p.m.

6. On August 5, 2022, the United States Trustee filed a motion seeking a Court order directing the Subchapter V Trustee to conduct an investigation into the acts, conduct, assets, liabilities, and financial condition of the Debtor (the “Investigation Motion”). [Doc. # 156]. The Court set the Investigation Motion for hearing on September 29, 2022.

7. The Debtor opposed the Investigation Motion and filed a motion for an order approving sale and bidding procedures and authorizing the sale of all or substantially all of the Debtor’s assets (the “Sale Motion”)[Doc. # 176].

8. On September 29, 2022, the Court granted the United States Trustee’s Investigation Motion to the extent of ordering the Subchapter V Trustee, pursuant to 11 U.S.C. § 1183(b)(2), to perform the duties under 11 U.S.C. §§ 1106(a)(3) and (4).

9. The Subchapter V Trustee filed his report on November 4, 2022 [Doc. # 203], reporting some conclusions, among others, that:

- To obtain a complete picture of the Debtor’s transactions with creditors and related entities would require a forensic accounting;

- The Subchapter V Trustee has been unable to identify potential claims for recovery for the Debtor's creditors;
  - Financial dealings between the Debtor and related entities have been intermingled post-petition;
  - The Debtor has paid personal obligations of its principal;
  - The Debtor made transfers to potential insiders that were not listed in the statement of financial affairs; and
  - And an entity, Top Paving, created post-petition by a current or former employee of the Debtor, has been operating rent-free out of the Debtor's premises.
10. The Sale Motion was granted on November 8, 2022.
11. The buyer has not performed, and the sale of the Debtor has not closed as of this writing.
12. Monthly operating reports ("MORs") submitted to the United States Trustee show, by the Debtor's own numbers, that the Debtor is suffering monthly negative cash flow, and the Debtor's post-petition payables stood at \$240,000 as of November 2022. There are material inconsistencies between the Debtor's bank statements and cash balances reported on the Debtor's MORs.
13. The Debtor's net losses, the substantial accrual of post-petition debt and actual income performance have resulted in substantial loss to the estate and demonstrate the absence of a reasonable likelihood of rehabilitation, and constitutes cause for conversion or dismissal. *See* § 1112(b)(4)(A)(substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation is cause for conversion or dismissal under § 1112(b)(1)).

14. The Debtor's losses to the estate, transactions with insiders, use of estate funds for benefit of the Debtor's principal, inconsistencies on its MORs, issues raised in the Subchapter V Trustee's report and the failure to close on the sale of the Debtor's assets demonstrate gross mismanagement of the estate, and constitutes cause for conversion or dismissal under 11 U.S.C. § 1112(b)(4)(B).

15. The interests of creditors and the estate would best be served by the conversion of the Debtor's Chapter 11 case to a case under Chapter 7, or by dismissal of this case, under 11 U.S.C. § 1112(b).

WHEREFORE, the United States Trustee respectfully requests that this Court enter an order (i) converting this case to a case under Chapter 7, or, in the alternative, (ii) dismissing this case, and (iii) granting all other relief as the Court deems just and proper.

Respectfully submitted,

WILLIAM K. HARRINGTON  
United States Trustee, Region 1

By: /s/ Lisa D. Tingue  
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January 13, 2023

#### CERTIFICATE OF SERVICE

I, Lisa D. Tingue, hereby certify that on January 13, 2022, I caused a copy of the foregoing document and attached statement to be served by email through the Court's ECF system to all entities that are registered users thereof in this case.

/s/ Lisa D. Tingue  
Lisa D. Tingue